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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786-2728-03]

RIN 0648-XA795

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass

Fisheries; 2012 Summer Flounder, Scup, and Black Sea Bass Specifications; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, correction.

SUMMARY: On April 23, 2012, NMFS published in the Federal Register the final rule to implement the 2012 summer flounder, scup, and black sea bass specifications, which established commercial summer flounder allocations for each coastal state from North Carolina to Maine, and the summer flounder recreational harvest limit. Following publication, an error was identified in the commercial summer flounder quota and recreational harvest limit. This rule corrects that error.

DATES: Effective [Insert date of filing for public inspection at the Office of the Federal Register], through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fisheries Management Specialist, (978) 281-9224, carly.bari@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS publishes this rule to correct an error in the commercial summer flounder quota and recreational harvest limit, which was implemented in the April 23, 2012 final rule on the 2012 summer flounder, scup, and black sea bass specifications. Regulations for the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine and a coastwide recreational harvest limit. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102.

Need for Correction

The final rule implementing 2012 summer flounder, scup, and black sea bass specifications published on April 23, 2012 (77 FR 24151). An error was found in the summer flounder commercial quota and recreational harvest limit. The 3-percent research set-aside (RSA) was mistakenly deducted twice from the quotas. The revised 2012 summer flounder commercial quota, less RSA, is 13,136,000 lb (5,958,490 kg), and the revised 2012 summer flounder recreational harvest limit, less RSA, is 8,758,000 lb (3,972,629 kg). Table 1 presents the allocations of summer flounder by state with the corrected commercial quota including RSA, overages, and transfers through December 11, 2012.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because this would be impracticable and contrary to the public interest. The interim final rule for the 2012 summer flounder, scup, and black sea bass specification already took comment on the initial summer flounder quota with the understanding that overage adjustments would be made. This action is correcting an error found in the specifications

regarding the summer flounder commercial quota and recreational harvest limit. In the April 23, 2012 rule, the 3-percent research set-aside (RSA) was mistakenly deducted twice from the quotas. Thus, this rule corrects this error by increasing the summer flounder commercial and recreational quotas by 3-percent. Delaying the implementation of this action to allow for prior notice and opportunity for comment of this correction could result in premature closures of the summer flounder fishery in states that have the potential to fully harvest their quotas. Given that states have surpassed their summer flounder quota in the past, if the revised quota is not implemented, there is the potential that the fishery would reach the erroneous harvest quota amount, and could produce unnecessary adverse economic consequences for fishermen that participate in this fishery. The measures in the interim final rule for the 2012 summer flounder, scup, and black sea bass specifications, for which the opportunity for public comment was already given, are unaffected by this correction.

Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date. This action is correcting an error found in the specifications regarding the summer flounder commercial quota and recreational harvest limit. Delaying the effective date of this correction to allow for the 30-day delay could result in premature closures of the summer flounder fishery in states that have the potential to fully harvest their quotas. Given that states have surpassed their summer flounder quota in the past, if the revised quota is not implemented immediately, there is the potential that the fishery would reach the erroneous harvest quota amount, and could produce unnecessary adverse economic consequences for fishermen that participate in this fishery.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply.

This final rule is exempt from review under Executive Order 12866.

Correction

In the Federal Register of April 23, 2012, in FR Doc. 2012-9755, on page 24152, Table 1 is corrected as follows:

TABLE 1. FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER
ALLOCATIONS FOR 2012

State	FMP Percent Share	Initial Quota, less RSA		2011 Quota Overages (through 10/31/11)		2012 Quota Transfers (through 12/11/12)		2012 Corrected Quotas, accounting for RSA, overages, and transfers to date	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	6,247	2,834	0	0	-6,000	-2,722	247	112
NH	0.00046	60	27	0	0	0	0	60	27
MA	6.82046	895,936	406,396	0	0	0	0	895,936	406,396
RI	15.68298	2,060,116	934,469	0	0	13,925	6,316	2,074,041	940,785
CT	2.25708	296,490	134,488	0	0	6,000	2,722	302,490	137,209
NY	7.64699	1,004,509	455,645	50,736	23,014	0	0	953,773	432,631
NJ	16.72499	2,196,995	996,557	0	0	0	0	2,196,995	996,557
DE	0.01779	2,337	1,060	54,982	24,940	0	0	-52,645	-23,880
MD	2.0391	267,856	121,500	0	0	0	0	267,856	121,500
VA	21.31676	2,800,170	1,270,157	0	0	1,890,420	857,495	4,690,590	2,127,651
NC	27.44584	3,605,286	1,635,358	0	0	1,904,345	863,811	1,700,941	771,547
Total	100.00	13,136,001	5,958,490	105,718	47,954	N/A	N/A	13,030,283	5,910,537

Notes: 2011 quota overage is determined through comparison of landings for January through October 2011, plus any landings in 2010 in excess of the 2010 quota (that were not previously address in the 2011 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all state with an allocation. A state with a negative number has a 2012 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 21, 2012

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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